

FILED

JUNE 4, 1998

SUPREME COURT OF WISCONSIN

Marilyn L. Graves
Clerk of Supreme Court
Madison, WI

In the Matter of the Amendment of
Supreme Court Rules: SCR 20:1.15 -
Safekeeping Property

ORDER
No. 97-05

The court held a public hearing September 9, 1997 on the petition of the Board of Governors of the State Bar of Wisconsin and the Board of Attorneys Professional Responsibility for the amendment of SCR 20:1.15, governing attorney trust accounts and other accounts for the retention of funds held in a fiduciary capacity. The proposed amendments would permit attorneys to place sufficient attorney or law firm funds in a trust account to avoid the imposition of service charges on it, would enlarge the authority for placing client funds in an income-generating investment vehicle, and would require attorneys to maintain trust accounts in financial institutions that agree to report to the Board of Attorneys Professional Responsibility any properly payable instrument presented against a lawyer trust account containing insufficient funds.

The original petition was filed April 16, 1997, and an amended petition was filed September 8, 1997, the day before the public hearing. Because the amended petition proposed rule amendments that were not part of the petition originally filed and there was no opportunity to give notice of them, the court

declines to adopt those proposed amendments; the petitioners may resubmit them in a new petition, for which notice will be given and a public hearing held.

The court has considered the amended petition, the materials filed with the court in the matter, and the presentations of the petitioners and others at the public hearing.

IT IS ORDERED that, effective January 1, 1999, the Supreme Court Rules are amended as follows.

SECTION 1. 20:1.15(a) of the supreme court rules is amended to read:

20:1.15 (a) A lawyer shall hold in trust, separate from the lawyer's own property, that property of clients ~~or~~ and third persons that is in the lawyer's possession in connection with a representation or when acting in a fiduciary capacity. Funds held in connection with a representation or in a fiduciary capacity include funds held as trustee, agent, guardian, personal representative of an estate, or otherwise. All funds of clients paid to a lawyer or law firm shall be deposited in one or more identifiable trust accounts as provided in paragraph (c). The trust account shall be maintained in a bank, trust company, credit union or savings and loan association authorized to do business and located in Wisconsin, ~~which~~. The trust account shall be clearly designated as "Client's Account" or "Trust Account" or words of similar import, ~~and no~~. No funds belonging to the lawyer or law firm, except funds reasonably sufficient to pay or avoid imposition of account service charges, may be deposited in such an account. Unless the client otherwise directs in writing,

securities in bearer form shall be kept by the attorney in a safe deposit box in a bank, trust company, credit union or savings and loan association authorized to do business and located in Wisconsin, ~~which~~. The safe deposit box shall be clearly designated as "Client's Account" or "Trust Account" or words of similar import. Other property of a client or third person shall be identified as such and appropriately safeguarded. If a lawyer also licensed in another state is entrusted with funds or property in connection with an out-of-state representation, this provision shall not supersede the trust account rules of ~~such~~ the other state.

SECTION 2. 20:1.15 (c) (intro.) of the supreme court rules is amended to read:

20:1.15 (c) (intro.) Each trust account ~~under this rule~~ shall be an account in ~~any~~ a bank, trust company, credit union or savings and loan association, selected in the exercise of ordinary prudence, and authorized by federal or state law to do business in Wisconsin ~~and~~. The trust account shall be insured by the Federal Deposit Insurance Corporation, the National Credit Union Share Insurance Fund, the Wisconsin Credit Union Savings Insurance Corporation, or the Federal Savings and Loan Insurance Corporation. An interest-bearing trust account shall bear interest at a rate no less than that applicable to individual accounts of the same type, size and duration and in which withdrawals or transfers can be made without delay when funds are required, subject only to any notice period which the depository

institution is required to observe by law or regulation. Lawyers and law firms are subject to the following:

SECTION 3. 20:1.15 (c) (2)c. of the supreme court rules is amended to read:

20:1.15 (c) (2)c. An income-generating investment vehicle selected by the client and designated in specific written instructions from the client or authorized by the court or other tribunal, on which income shall be paid to the client or as directed by the court or other tribunal, net of any transaction costs.

SECTION 4. 20:1.15 (c) (2)cg. and cm. of the supreme court rules are created to read:

20:15 (c) (2)cg. An income-generating investment vehicle selected by the lawyer and approved by a court where the lawyer serves as guardian for a ward, under chs. 880 and 881, stats.

cm. An income-generating investment vehicle selected by the lawyer to protect and maximize the return on funds in a bankruptcy estate, which investment vehicle is approved by the trustee in bankruptcy and by a bankruptcy court order, consistent with 11 USC 345.

SECTION 5. 20:1.15 (h) to (p) of the supreme court rules are created to read:

20:1.15 (h) In subsections (i) to (p):

(1) "Financial institution" means an institution listed in subs.(a) and (c).

(2) "Properly payable instrument" means an instrument that, if presented in the normal course of business, is in a form requiring payment under the laws of this state.

COMMENT

Terms used in subsections (j) to (p), such as "dishonored instrument," that have specific meaning in Wis. Stat. chapters 401 to 411 (Uniform Commercial Code) and in case law and administrative regulations are to be understood as having that meaning for purposes of subs. (j) to (p).

(i) Lawyer trust accounts shall be maintained only in a financial institution that has agreed to provide the overdraft report under sub. (j).

(j) In the event any properly payable instrument is presented against a lawyer trust account containing insufficient funds, whether or not the instrument is honored, the financial institution shall, simultaneously with the customary overdraft notice to the depositor or investor, report the overdraft to the Board of Attorneys Professional Responsibility.

(k) The overdraft reporting agreement under par. (i) shall provide that all reports made by the financial institution shall be substantially in the following format:

(1) In the case of a dishonored instrument, identical to the overdraft notice customarily forwarded to the depositor and with a copy of the dishonored instrument, if a copy is normally provided to the depositor.

(2) In the case of instruments that are presented against insufficient funds and are honored, identification of the financial institution involved, the lawyer or law firm, the

account number, the date on which the instrument is paid, and the amount of overdraft created by the payment.

(L) A report made under par. (j) shall be made simultaneously with the overdraft notice given to the depositor.

(m) The Board shall hold each overdraft report for 10 business days or the minimum time required by the financial institution, whichever is less, to enable the financial institution to withdraw a report provided by inadvertence or mistake, except that the curing of an insufficiency of available funds by a lawyer or law firm by the deposit of additional funds does not constitute reason for withdrawing an overdraft report.

(n) Every lawyer practicing or admitted to practice in this state shall comply with the reporting and production requirements of this rule.

(o) This rule does not preclude a financial institution from charging a particular lawyer or law firm for the reasonable costs of producing the reports and records required by this rule.

(p) This rule does not create a claim against a financial institution or its officers, directors, employees, and agents for failure to provide a trust account overdraft report or for compliance with any provision of this rule.

IT IS FURTHER ORDERED that notice of these amendments of the Supreme Court Rules shall be given by a single publication of a

copy of this order in the official state newspaper and in an official publication of the State Bar of Wisconsin.

Dated at Madison, Wisconsin, this 4th day June, 1998.

BY THE COURT:

Marilyn L. Graves,
Clerk of Court